



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** U.S. Defense Systems, Inc.

**File:** B-248928

**Date:** September 30, 1992

Thomas D. Boyatt for the protester.  
Dennis J. Gallagher, Esq., Department of State, for the agency.  
Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Offeror with the lowest technical rating and the highest price of the five offerors in the competitive range lacks the direct economic interest necessary to be an interested party for purposes of pursuing a bid protest since the protester would not be in line for award even if every issue raised were resolved in its favor.

### DECISION

U.S. Defense Systems, Inc. (USDS) protests the award of a contract to Wackenhut of Canada under request for proposals (RFP) No. LGP 1/92 issued by the Department of State (DOS) for security guard services at the U.S. Embassy in Ottawa, Canada. USDS protests that it was unfairly denied additional evaluation points under a solicitation provision granting a preference to United States (U.S.) companies. In addition, USDS claims that the evaluation of technical and financial factors was unreasonable and inconsistent with the stated evaluation criteria.

We dismiss the protest on the ground that USDS is not an interested party to challenge award to Wackenhut.

The solicitation was issued on January 17, 1992, and contemplated award of a fixed-price contract. After receiving input from the protester regarding the agency's omission of a statutory requirement for a preference for U.S. companies, see 22 U.S.C.A. § 4864 (West Supp. 1991), DOS revised its

solicitation on February 6. This amendment corrected the omission by adding solicitation provisions to implement the requirement.<sup>1</sup>

As part of the agency's effort to implement the statutory preference for U.S. firms, the amendment to the solicitation revised the evaluation criteria set forth in section M of the RFP. Specifically, the revised RFP established maximum evaluation points as follows:

Technical Evaluation	50
Price Evaluation	50
U.S. Preference	+ 5
Total	105

The solicitation also stated that award would be made to the offeror whose proposal was determined to present the best value to the government, price and other factors considered. In addition, section K of the RFP required offerors seeking the additional credit available to U.S. firms to provide information to establish their eligibility for the preference.

Nine proposals were received by the April 10, 1992, due date for initial submissions. After review of the proposals by the Technical Evaluation Panel, the contracting officer included five of the proposals in the competitive range. Among the five were the proposals of Wackenhut and USDS.

Upon receipt of best and final offers (BAFO), the agency assigned final technical point scores and cost scores for the five offerors in the competitive range. After application of the 5-point U.S. preference, Wackenhut received the highest total point score, 97.63. USDS, on the other hand, received the lowest total point score, 72.13. USDS' total score was the result of receiving the lowest technical score, and the lowest price score--i.e., USDS submitted the lowest-ranked technical proposal and the highest price.

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<sup>1</sup>As the protester argues, we have previously sustained protests against DOS solicitations for failing to include solicitation provisions to implement this statute. In addition, we have expressed concern that DOS may not be acting to implement the statute as required. See U.S. Defense Sys., Inc., B-244653.2, Dec. 23, 1991, aff'd, Department of State--Recon., B-244653.3, May 15, 1992, 92-1 CPD ¶ 445.

On June 1, the agency awarded to Wackenhut, and on June 3 USDS filed this protest.<sup>2</sup>

In its protest, USDS claims that it was improperly deprived of the U.S. firm preference because the agency did not give USDS an opportunity to establish its eligibility for the preference. Specifically, when USDS received written notice of the agency's award decision, there was an attachment asking for additional information regarding USDS' eligibility for the preference. At the top of the attachment were instructions to the contracting officer--presumably from agency legal counsel--directing that the attachment be included as part of a notice of deficiency during negotiations with the USDS. USDS also complains that in attempting to implement the statutory preference for U.S. firms, the agency asks for too much information from offerors, and misinterprets certain requirements of the statute. The only challenge in the initial protest not relating to the U.S. preference is USDS' general claim that the agency "unreasonably, inaccurately and unfairly applied the financial and technical evaluation factors."

In its comments on the agency report, USDS provides the first specifics of its claim that the agency unreasonably applied evaluation factors. According to USDS, the agency improperly failed to increase USDS' technical score after receipt of BAFOs, even though USDS corrected a deficiency identified in the initial technical evaluation--i.e., in its BAFO, USDS identified for the first time its Ottawa manager for the contract. In addition, USDS claims that the solicitation failed to provide adequate guidance regarding whether offerors were required to honor existing guard salaries, or were permitted to cut salaries below existing levels.<sup>3</sup>

Under the Competition in Contracting Act of 1984 and our Regulations, a protester must qualify as an interested party before its protest may be considered by our Office. See 31 U.S.C. § 3553; 4 C.F.R. § 21.1(a). That is, a protester must have a direct economic interest which would be affected

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<sup>2</sup>Pursuant to the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(c)(2) (1988), DOS proceeded with contract performance in the face of the protest based upon a written determination that urgent and compelling circumstances will not permit waiting for our decision.

<sup>3</sup>USDS' claim in this regard is, in effect, a challenge to the adequacy of the solicitation, which is untimely when first raised in the protester's comments on the agency report. Protests based upon alleged improprieties in a solicitation must be filed prior to the closing date set in the solicitation. 4 C.F.R. § 21.2(a)(1) (1992).

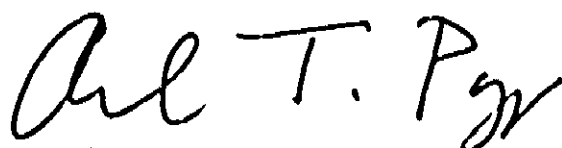
by the award of a contract or the failure to award a contract, 31 U.S.C. § 3551(2); 4 C.F.R. § 21.0(a). Here, given USDS' technical and cost ranking, and the specific issues it raises in its protest, each of the other offerors in the competitive range has a greater stake in the outcome of the procurement than does USDS.

USDS raises two issues that it argues should result in a change to its final score--the agency's failure to grant USDS the 5-point preference available for U.S. firms, and the agency's alleged failure to rescore USDS' BAFO after it named an Ottawa manager. Our review of the evaluation materials provided with the agency report indicates that even if USDS were to prevail on both issues, USDS would still not be in line for award in this procurement.

The category of technical personnel--the category in which USDS was downgraded for failing to name an Ottawa manager in its initial proposal--was worth 30 percent of the 50 points available under the technical category, or 15 points. Since USDS had already received 10.5 of the 15 points available, rescoring USDS' BAFO (and awarding a perfect score under this category) would have added no more than 4.5 points to USDS' score. Therefore, even if we assume that USDS should have received both these points and those related to the preference for U.S. firms, its score would only rise from 72.13 to 81.63--still well below the awardee's 97.63 total. In addition, USDS' relative position in the competitive range would rise only from fifth to fourth in line for award.

Where, as here, there are intervening offerors with a greater interest in the procurement than the protester, we generally consider the protester's interest to be too remote to qualify the protester as an interested party. Four Seas and Seven Winds Travel, Inc., B-244916, Nov. 15, 1991, 91-2 CPD ¶ 463; Airtrans, Inc., B-231047, May 18, 1988, 88-1 CPD ¶ 473. Since nothing in USDS' protest would alter the ratings of the intervening offerors, USDS would not be in line for award if its protest allegations were sustained. Accordingly, USDS lacks the direct economic interest necessary to be an interested party for pursuing a bid protest.

The protest is dismissed.



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